



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Oregon State Office
P.O. Box 2965
Portland, Oregon 97208
<http://www.blm.gov/or>



ELECTRONIC MAIL SYSTEM – RETURN RECEIPT REQUESTED

Lee O'Connor
MuckRock News
DEPT MR 71918
411A Highland Ave.
Somerville, MA 02144-2516
71918-01584390@requests.muckrock.com

Dear Mr. O'Connor:

This letter completes our response to your Freedom of Information Act (FOIA) Request No. OR-2019-057/eFTS BLM-2019-00635. You seek, in connection with the Bureau of Land Management's (BLM) Prineville District, "Reports on the history and cultural resources and geology of Redmond Caves."

We enclose approximately 700 pages; of these, we release approximately 147 pages in their entirety. We reasonably foresee that disclosure of some of these pages would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure and are listed as follows.

We withheld approximately 553 partial pages under Exemption 3 - specifically exempted from disclosure by statute - Archaeological Resources Protection Act of 1979 (ARPA), and Section 304 of the National Historic Preservation Act of 1966 (NHPA).

Further, we withheld approximately 37 partial pages under Exemption 6 of the FOIA because the release of this information would clearly be expected to constitute an unwarranted invasion of personal privacy.

The undersigned is responsible for this partial denial of responsive records. The decision to withhold information was made in consultation with Carmen Thomas, Attorney-Advisor, Department of the Interior, Office of the Solicitor, Pacific Northwest Region. We enclose a statement that further describes the FOIA exemptions used; a mandatory exclusionary statement (MES) regarding the FOIA and your rights to liaison and mediation services; as well as the right to appeal this partial denial response.

The fees incurred in responding to your request are less than \$50.00 and are not being charged in accordance with 43 C.F.R. § 2.49(a)(1). In the interest of saving fees, we did not include any known duplicative pages.

If you have any questions concerning this letter, please contact FOIA Specialist Shannon Wolery, at 541-473-6321, BLM_OR_SO_FOIA@blm.gov, or by facsimile at 503-808-6615.

Sincerely,

**JONATHAN
LEBARON**

Digitally signed by
JONATHAN LEBARON
Date: 2019.07.29
08:23:06 -07'00'

Jonathan W. LeBaron
Deputy State Director
Management Services, Oregon/Washington

Enclosures

Responsive Records

Exemptions 3 and 6 of the FOIA

MES, Public Liaison, OGIS Mediation Services and Appeal Rights

cc: Prineville District FOIA Coordinator

Exemption 3 of the Freedom of Information Act

ARPA and NHPA

Exemption 3 of the FOIA, at 5 U.S.C. § 552 (b)(3), allows an agency to withhold records “specifically exempted from disclosure by statute.” The Archaeological Resources Protection Act of 1979 (ARPA, 16 U.S.C. 470h(a)), provides for the confidentiality of information concerning the nature and location of archaeological resources. ARPA states: “Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission ... may not be made available to the public under [FOIA] ... unless the Federal land manager concerned determines that such disclosure would –

- (1) further the purposes of [ARPA or 16 U.S.C. 469-469c], and
- (2) not create a risk of harm to such resources or to the site at which such resources are located.”

Further, the National Historic Preservation Act of 1966 (NHPA, 16 U.S.C. 4702-3(a)) provides authority to withhold from disclosure and protect certain sensitive information about historic properties when such disclosure could result in a significant invasion of privacy, damage to the historic property, or impede the use of a traditional religious site by practitioners.

We find that the statutory conditions for releasing information concerning the nature and location of the resources are not met in this case. Disclosure will not further the purposes of ARPA and NHPA, and release of the information could create a risk of harm through looting, vandalism, or traditional religious uses.

Exemption 6 of the Freedom of Information Act

Exemption 6 of the FOIA, at 5 U.S.C. § 552(b)(6), allows an agency to withhold “personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The phrase “similar files” covers any agency records containing information about a particular individual that one can identify as applying to that individual. See *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982).

To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that disclosure would affect against any public interest in the information. See *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

The only relevant public interest to consider under this exemption is the extent to which the information sought would “she[d] light on an agency’s performance of its statutory duties.” See *United States Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495-96 (1994). The

burden is on the requester to establish that disclosure would serve the public interest. See *National Archives and Records Admin. v. Favish*, 541 U.S. 157, 171-72 (2004). When the privacy interest at stake and the public interest in disclosure have been determined, we must weigh the two competing interests to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for making a request for information do not affect this balancing test, as a release of information requested under the FOIA constitutes a release to the general public. See *Reporters Comm.*, 489 U.S. at 771.

Because the harm to personal privacy is greater than whatever may serve public interest by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals.

MES, Public Liaison, OGIS Mediation Services, and Appeal Rights

Mandatory Exclusionary Statement

Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). Our response is limited to those records that are subject to the requirements of the FOIA. We give this standard notification to all our requesters, and you should not take this notice as an indication that excluded records do, or do not, exist.

Public Liaison and OGIS Mediation Services

Please note that you may seek dispute resolution services by contacting our FOIA Public Liaison, Ryan Witt, as follows:

BLM FOIA Officer
1849 C. Street NW, Rm 2134LM
Washington, D.C. 20240
Telephone: 202-912-7562
Fax: 202-245-0027
Email: rwitt@blm.gov

Alternatively or in addition, you may seek dispute resolution services from the Office of Government Information Services (OGIS). The purpose of the OGIS is to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to appeal and litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
Email: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770 or 877-684-6448
Facsimile: 202-741-5769

Be advised that using OGIS mediation services does not suspend the timing of filing an appeal with the Department of the Interior FOIA Appeals Office.

Appeal Rights

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this response letter to which this document is an enclosure. Please be advised that the FOIA/PA Appeals Office considers appeals received or delivered after 5 p.m. (Eastern Time), Monday through Friday, as received on the next workday. **Your appeal must be in writing.**

You may submit your appeal and accompanying materials to the FOIA/PA Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe that the Bureau of Land Management's (BLM's) response is in error.

You must also include with your appeal copies of all correspondence between you and the BLM concerning your FOIA request, including your original FOIA request and the BLM's response. Failure to include with your appeal all correspondence between you and the BLM will result in the Department of the Interior's rejection of your appeal, unless the FOIA/PA Appeals Officer determines (in the FOIA/PA Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/PA Appeals Officer needs additional information or clarification of your appeal. You must send your appeal to the following:

Department of the Interior
Office of the Solicitor
Attn: FOIA/Privacy Act Appeals Officer
1849 C Street, NW
MS-6556 MIB
Washington, DC 20240
Telephone: 202-208-5339
Facsimile: 202- 208-6677
Email: FOIA.Appeals@sol.doi.gov